No. 85-958

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

THE STATE OF ILLINOIS,

Petitioner,

v.

LARRY W. EYLER,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Second Judicial District

REPLY TO THE MEMORANDUM IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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To The Honorable Chief Justice And The Associate Justices Of The United States Supreme Court:

Petitioner, pursuant to this Court's Rule 22.5, submits the following Reply to the Memorandum In Opposition To A Petition For Writ Of Certiorari, filed by Respondent on or about March 5, 1986. By way of reply, Petitioner states as follows:

Several factual assertions made in the memorandum of the Respondent are not supported by the record. The Respondent states that Darl Hayward did not give a statement for approximately an hour and a half after Respondent's arrest. (Respt.'s Mem. p. 2) The uncontradicted testimony established that the crucial information giving rise to probable cause to arrest the Respondent was given in a conversation which began while Respondent was at the scene of the original stop, and was completed before a truck arrived to tow the Respondent's truck. (R. 229, 252, 230) The Respondent refers to a written statement given thereafter at the station.

The Respondent repeatedly avers that, but for the illegal arrest, the "very existence" of Darl Hayward would not have been known to police. (Respt.'s Mem. pp. 2, 3, 5) Again, the testimony was uncontradicted. The Respondent was stopped legally for a traffic offense. (R. 174-175) The trooper conducting the stop immediately asked both persons in the truck for identification and asked both of them questions. (R. 177-178) The officers learned of Hayward's existence legally; they would have had every right to speak to him regardless of their treatment of the Respondent. *See* Petition p. 15.

Several aspects of the Respondent's argument are also invalid legally. The Respondent asserts unequivocally that, if a person is arrested without probable cause, nothing

that occurs thereafter can make that arrest lawful. (Respt.'s Mem. p. 3) The Respondent is forced to retreat from that position in his attempts to distinguish those cases which found that continued detention of an arrestee was proper, when the original arrest was illegal, but police subsequently obtained probable cause from an untainted source. (Respt.'s Mem. pp. 4-5) The absolutist position of the Respondent is seriously flawed because it would compel the release of a suspect who had been illegally arrested, regardless of the source or quality of after-acquired information giving rise to probable cause. Such a result is contrary to the principles established by this Court in *Wong Sun v. United States*, 371 U.S. 471 (1963). If the after-acquired information is not a fruit of the illegal arrest, and if it provides probable cause, then continued detention of the arrestee is proper. Any other rule would cause the exclusionary rule to place the prosecution in a worse position than it would have been absent the illegality, contrary to this Court's principles as state in *Nix v. Williams*, ____ U.S. ____, 104 S.Ct. 2501, 2509 (1984). The illegal arrest of the Respondent was curable by untainted information.

The Respondent's arguments that Darl Hayward's statements were tainted by the illegal arrest of the Respondent are rebutted by the analysis in the original Petition for Certiorari. It should be noted that the facts underlying the traffic arrest were largely undisputed, and the only issues are the inferences to be drawn from, and the legal significance of, those facts.

Finally, Respondent misconstrues the citation of *Nix v. Williams*, ____ U.S. ____, 1045 S.Ct. 2501 (1984) in the original petition. It is not argued before this Court that all the evidence at issue would have been discovered inevitably. Rather, *Nix* was cited for a broader proposition regarding the impact of the exclusionary rule.

The Petitioner reiterates the arguments raised in the original Petition for Certiorari, and respectfully requests that Certiorari be granted and that the ruling of the Illinois Appellate Court, Second District be reversed.

Respectfully submitted,

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